



06-27-05

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Atty. Dkt. No. 061300-0242

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: O'Connell, et al.

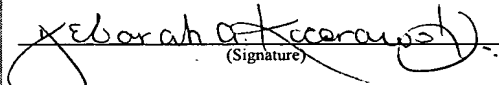
Title: ENVIRONMENTAL SHIELD  
FOR A TRUCK MOUNTED  
CONCRETE MIXER

Appl. No.: 09/954,677

Filing Date: 09/15/2001

Examiner: Cooley, Charles E.

Art Unit: 1723

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
EV 633080847 US (Express Mail Label Number)	June 24, 2005 (Date of Deposit)
Deborah A. Kocorowski (Printed Name)	
 (Signature)	

TRANSMITTAL

Mail Stop **PATENT EXT.**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Transmitted herewith are the following documents for the above-identified patent application:

- [ X ] Application For Reconsideration Of Patent Term Adjustment Under 37 C.F.R. § 1.705(b) (3 pages).
- [ X ] Copy of PAIR Patent Term Adjustment determination (1 page).
- [ X ] Copy of previously filed Declaration Of James A. Wilke Under 37 C.F.R. § 1.137 (2 pages).
- [ X ] Check No. 15678 in the amount of \$200.00 for filing an application for patent term adjustment under 37 C.F.R. § 1.18(e).


The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 06-24-05

FOLEY & LARDNER LLP  
Customer Number: 26371  
Telephone: (414) 297-5776  
Facsimile: (414) 297-4900

By 

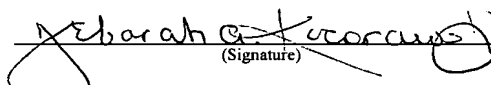
James A. Wilke  
Attorney for Applicants  
Registration No. 34,279



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Deborah A. Kocorowski (Printed Name)	
 (Signature)	

**APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**UNDER 37 C.F.R. § 1.705(b)**

Mail Stop **PATENT EXT.**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Applicants hereby request reconsideration of the Patent Term Adjustment for the above-identified patent application.

- (1) Applicants have included the fee of \$200.00 as set forth in 37 C.F.R. § 1.18(e).
- (2) Applicants were issued a Notice of Allowance (NOA) on March 30, 2005, which indicated that the Patent Term Adjustment (PTA) for the above-identified patent application is 0 day(s). According to the Patent Application Information Retrieval (PAIR) System, the prosecution history of the above-identified patent application includes a 643 day USPTO delay and a 0 day Applicant delay (copy of PAIR PTA determination included herewith). Applicants request reconsideration of the PTA for the following reasons:

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(i) Applicants believe that the correct PTA for the above-identified patent application is 643 days.

(ii) PTA Determination

(a) USPTO Delays

The PAIR System indicates that a 643-day USPTO delay is attributable to an erroneous Notice of Abandonment issued by the USPTO as described below and in the Declaration attached hereto.

(b) Applicant Delay

The PAIR System indicates an Applicant delay of 0 days.

The USPTO issued a Notice of Abandonment in error on November 10, 2003.

Applicants timely responded to the Notice of Abandonment by filing a Petition to Revive on January 9, 2004. The Petition was granted on April 30, 2004.

The USPTO issued a Withdrawal of Previously Sent Notice on July 29, 2004, indicating that the Notice of Abandonment mailed on November 10, 2003, was sent in error.

(c) PTA Calculation

As such, Applicants contend that the USPTO delay is 643 days and that the Applicant delay is 0 days. Therefore, the above-identified patent application is entitled to a 643 day PTA.

(iii) Terminal Disclaimer

The above-identified patent application is not subject to a terminal disclaimer.

(iv) Circumstances That Constitute a Failure to Engage in Reasonable Efforts to Conclude Processing or Examination


Applicants believe that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified patent application as set forth in 37 C.F.R. § 1.704.

Should any questions arise with regard to this Application for Reconsideration of Patent Term Adjustment, please contact the undersigned.

Respectfully submitted,

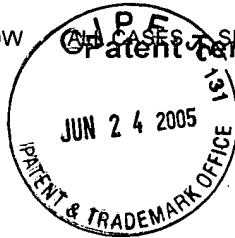
Date 06-24-05

FOLEY & LARDNER LLP  
Customer Number: 26371  
Telephone: (414) 297-5776  
Facsimile: (414) 297-4900

By 

James A. Wilke  
Attorney for Applicants  
Registration No. 34,279

CLOSE WINDOW



Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 061300-0242  
Application Number: 09/954677  
Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	09/15/2001	0		
	14 month From Application date	11/15/2002	426		
Edit Delete	Notice of Abandonment	11/10/2003	786		
Edit Delete	Petition to Revive Received at PTO	01/09/2004	846		
Edit Delete	Petition to Revive Received at PTO	04/15/2004	943		
Edit Delete	Petition to Revive App. Accepted	04/30/2004	958		
Edit Delete	Non-Final Office Action	08/19/2004	1,069		
Edit Delete	Non-Final Office Action Response Received at PTO	11/15/2004	1,157		
Edit Delete	Non-Final Office Action	12/21/2004	1,193		
Edit Delete	Non-Final Office Action Response Received at PTO	02/16/2005	1,250		
Edit Delete	Notice of Allowance	03/30/2005	1,292		
	Projected Patent Grant Date	10/11/2005	1,487		
			Totals:	643	0
			PTA:	643	

643 *first office action*

Created and maintained by

**FOLEY**

LOGIN: Andrew Mitchell

IP: 10.50.33.48

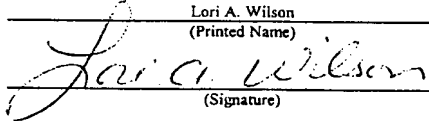
Foley &amp; Lardner LLP



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EL 979073001 US (Express Mail Label Number)	1/9/04 (Date of Deposit)
Lori A. Wilson (Printed Name)	
 (Signature)	

**DECLARATION OF JAMES A. WILKE UNDER 37 C.F.R 1.137**

I, James A. Wilke declare:

1. I am an adult resident of the State of Wisconsin.
2. I am, and at all relevant times, an attorney for Oshkosh Truck Corporation, Oshkosh Wisconsin (OTC).
3. I filed a patent application now identified with Serial No. 09/954,677, a copy of a postcard bearing a U.S. Patent Office bar code sticker with the above serial number is attached hereto and incorporated herein by reference.
4. Prior to receipt of the Notice of Abandonment mailed November 10, 2003 and received in our Milwaukee Office on November 13, 2003, no communication from the U.S. Patent Office was received by the undersigned.
5. Upon information and belief, a Notice to File Missing Parts for Serial Number 09/954,677, was not received by our docketing department which receives and docket all correspondence from the U.S. Patent Office. A document dated November 13, 2003, entitled FL\_USPTO Form, bearing a Serial Number of 09/654,677 ( a copy of which is attached hereto) shows a misstatement of the serial number for our docket number.
6. The undersigned believes that the misstatement of numbers in the Serial Number caused the failure to reply to the Notice of Missing Parts. The undersigned believes

that the U.S. Patent Office mailed the Notice of Missing Parts to a correspondence address for serial number 09/654,677.

7. The undersigned conducted a telephone conversation with Mr. Preston Wallace of the U.S. Patent Office, on November 13, 2003 to explain and discuss this matter. Mr. Wallace suggested that a Petition to Revive be filed.

8. This declaration accompanies a copy of the Notice of Abandonment, the requisite revival fee, (\$1,330.00) a copy of the declaration and power of attorney of inventor Michael B. Cahoun, and the filing fee for the application (\$840.00).

9. I have been informed by a representative of Oshkosh Truck Corporation that named inventor, Jack Harowitz, after a diligent attempt to contact him, is not available at this time and that named inventor William J. O'Connell is refusing to sign any documents at this time. Neither of such inventors are employees of Oshkosh Truck Corporation.

10. I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. I make the statements set forth above of my own personal knowledge, and, if called upon to do so, could testify competently thereto. I acknowledge that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. §1001) and may jeopardize the validity of the patent application and any corresponding patent.

Respectfully submitted,

Date 01-09-04

FOLEY & LARDNER  
777 East Wisconsin Avenue, Suite 3800  
Milwaukee, Wisconsin 53202-5306  
Telephone: (414) 297-5776  
Facsimile: (414) 297-4900

By



James A. Wilke  
Attorney for Applicant  
Registration No. 34,279